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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

8 In re: 9 USA COMMERCIAL MORTGAGE COMPANY, 10 USA CAPITAL REALTY ADVISORS, LLC, 11 USA CAPITAL DIVERSIFIED TRUST 12 DEED FUND, LLC, 13 USA CAPITAL FIRST TRUST DEED FUND, LLC, 14 15 USA SECURITIES, LLC, Debtors. 16 Affects: 17 □All Debtors ☑ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Securities, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

Case No. BK-S-06-10725-LBR Case No. BK-S-06-10726-LBR Case No. BK-S-06-10727-LBR Case No. BK-S-06-10728-LBR Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

DECLARATION OF EDWARD M.
BURR IN SUPPORT OF OMNIBUS
OBJECTIONS TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN THE ONE POINT
STREET, LLC – HFA NORTH
YONKERS LOAN; AND
CERTIFICATE OF SERVICE

Date of Hearing: February 21, 2008 Time of Hearing: 9:30 a.m.

I, Edward M. Burr, hereby declare under penalty of perjury that:

1. I am a principal with Sierra Consulting Group, LLC ("Sierra"). Sierra is one of the leading providers of restructuring advisory and litigation support services in the Southwest. Sierra is a leading national consulting firm comprised of experienced CPAs and other financial professionals.

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- 2. I submit this declaration on behalf of the USACM Liquidating Trust's Objections to Proofs of Claim filed this date.
- 3. This Court approved the Official Committee of Unsecured Creditors of USA Commercial Mortgage Company's ("Committee") appointment of Sierra as financial advisers on August 11, 2006. Since that date, I have assisted the Committee in analyzing facts concerning these jointly administered bankruptcy cases. As of the Effective Date of the confirmed Plan of Reorganization, Sierra is retained by the USACM Liquidating Trust to investigate and reconcile the claims against the USA Commercial Mortgage Company ("USACM") estate.
- 4. I make the following declaration based upon my personal knowledge, and upon the records of the Debtors described in this declaration, including Debtors' original and amended schedules of liabilities and the proofs of claim described herein, as well as Debtors' accounting records.
- 5. On April 13, 2006 (the "Petition Date"), USACM and other debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. USACM continued to operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, under new management by Thomas J. Allison of Mesirow Financial Interim Management, LLC ("Mesirow"), who served as the Chief Restructuring Officer.
- 6. On January 8, 2007, the Court entered an order confirming the Plan [Docket No. 2376]. On the March 12, 2007 Effective Date of the Plan, the USACM Liquidating Trust succeeded to USACM's rights with respect to books and records.
- 7. Sierra has been working closely with both the Trustee for the USACM Liquidating Trust and Development Specialist Inc. ("DSI"), the Trustee's financial advisor, in evaluating all of the claims that were filed in the USACM estate.

- 8. **Exhibit A**, attached, lists Proofs of Claim that appear to be based, in whole or in part, upon an investment in the One Point Street, LLC HFA North Yonkers Loan ("North Yonkers Loan"). For each claim listed, **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant's address, the total amount of the claim and the total amount of the claim that appears to be related to the North Yonkers Loan based upon the information provided by the claimant.
- 9. We are advised by the loan servicer, confirmed by payment records, that on or about May 26, 2006, the North Yonkers Loan was paid in full, as reflected in USACM's books and records. Shortly thereafter, USACM processed the payoff and distributed the proceeds to the Direct Lenders on the North Yonkers Loan.
- 10. The Direct Lenders were paid in full, subject to servicing fees and any other charges under their respective Loan Servicing Agreements and this Court's orders, including the Confirmation Order. In general, the Direct Lenders received their principal and interest on the North Yonkers Loan, less sums withheld for Prepaid Interest and sums known as the 2% Holdback. On the Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback was applied to the allowed claims of the Direct Lender Committee, and the balance paid to the Direct Lenders.
- 11. Accordingly, the USACM Trust no longer has further obligations to the Direct Lenders arising out of the North Yonkers Loan because, pursuant to USACM's books and records, the North Yonkers Loan has been repaid in full, and the Direct Lenders have received such payment as they were entitled to under the confirmed plan of reorganization.

Dated: January 18, 2008

/s/ Edward M. Burr

Edward M. Burr

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	L A W Y E R S
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1	Copy of the foregoing mailed by first class Postage prepaid U.S. Mail on January 18, 2008 to:
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3	All parties in interest listed on Exhibit A attached.
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